

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE McGUIRE and U.S. POSTAL SERVICE,
POST OFFICE, South Suburban, IL

*Docket No. 00-2588 Submitted on the Record;
Issued August 15, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant was entitled to compensation for total disability for the period of April 1 to June 13, 1999 causally related to her March 29, 1999 employment injury.

On March 29, 1999 appellant, a 48-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on March 29, 1999 she sustained an injury to her lower and mid back when she fell on a conveyor belt while in the course of her employment.

In a March 29, 1999 report, Dr. Francisco Rico, being an employing establishment physician, who was Board-certified in family practice and sports medicine, noted appellant's history of injury. Dr. Rico stated that she was injured at work when she fell on a roller belt and experienced a sharp pain in the thoracolumbar area. He found that appellant had a thoracolumbar strain and indicated appellant's condition was causally related to her work injury of March 29, 1999. Dr. Rico recommended that appellant take Naproxin as well as Flexeril and to start physical therapy. He advised that appellant could return to work with restrictions of no repetitive lifting or pushing more than 20 pounds and indicated he would reevaluate appellant on April 1, 1999. In the activity status report of March 29, 1999, Dr. Rico diagnosed lumbar strain and thoracic strain and also advised a return to work with modified duties.

Appellant was offered a light-duty position effective March 29, 1999.

In a March 30, 1999 disability certificate, Dr. Charles Chen diagnosed lumbar strain, thoracic strain and contusion to the lower back. Dr. Chen indicated that appellant was totally incapacitated from her regular duties on March 30 to 31, 1999. He released appellant to light duty as of April 1, 1999.

In an April 1, 1999 duty status report, Dr. Rico advised that appellant remain on modified activity with no repetitive lifting over 20 pounds and no pushing or pulling over 20 pounds.

In an April 10, 1999 disability certificate, Dr. Chen stated that appellant was totally incapacitated during the period of April 9 to 24, 1999. He indicated that it was undetermined as to what date appellant could be released for light or regular duties. Dr. Chen did not offer an explanation as to why he had changed appellant's status from light duty to total disability.

In an April 10, 1999 attending physician's supplemental report, Dr. Chen checked the box "yes," indicating he believed that appellant's condition was caused or aggravated by an employment activity. He also checked the box "yes," indicating appellant was totally disabled for work. Dr. Chen advised that appellant was unable to resume regular work.

In an April 23, 1999 letter, the employing establishment controverted the claim. The employing establishment also indicated that appellant was offered a limited-duty position in accordance with the recommendations of the contract physician, who recommended light duty. The employing establishment indicated that appellant went to her private physician, Dr. Chen, was placed on total disability for March 29 and 30, 1999 and returned to limited duty as of April 1, 1999. On April 8, 1999 the employing establishment indicated that appellant stated she was in pain and she was sent to the employing establishment's contract physician, who placed her on limited duty. It was noted that, on April 9, 1999, Dr. Chen gave appellant a temporary total disability until April 24, 1999.

In an April 24, 1999 disability certificate, Dr. Chen stated that appellant was totally incapacitated during the period from April 24 to May 8, 1999. He indicated that it was undetermined as to what date appellant could be released for light or regular duties.

In a May 11, 1999 disability certificate, Dr. Chen stated that appellant was totally incapacitated during the period from March 30, 1999 to "undetermined." He indicated that it was undetermined as to what date appellant could be released for light or regular duties. No explanation was given for this change in appellant's status.

In May 25, 1999 attending physician's reports, Dr. Chen checked the box "yes," indicating he believed that appellant's condition was caused or aggravated by an employment activity. He also checked the box "yes," indicating appellant was totally disabled for work. The doctor put in "undetermined" for the date appellant was able to resume regular or light work.

In a June 8, 1999 disability certificate, Dr. Chen indicated that appellant was totally incapacitated from her regular duties from June 8 to 13, 1999 and released to light duty on June 14, 1999.

In an undated report, Dr. Chen indicated that appellant was under his care for a work related injury sustained on March 29, 1999. He stated that appellant fell backwards onto a conveyor belt. Dr. Chen indicated that appellant went to Concentra for treatment, and had x-rays taken. He indicated that he first saw appellant on March 30, 1999 and appellant was on limited duty. Dr. Chen indicated that Concentra recommended physical therapy for two weeks and he saw appellant again on April 10, 1999. He indicated that appellant's ambulation had declined and she had difficulty with walking, standing, forward bending and breathing. Dr. Chen indicated that appellant was totally disabled as of April 9, 1999 as she was not given the requisite physical therapy, which had been prescribed. He indicated that appellant was returned

to work with limited duty and physical therapy; however, due to the fact that appellant did not receive this treatment, he again prescribed it on May 12, 1999. Dr. Chen indicated that appellant became totally disabled to perform any of her job duties on April 9 to June 13, 1999 due to an increase of work restriction and failure to provide the recommended physical therapy.

In several June 8, 1999 reports, Dr. Chen indicated that he had examined appellant and she could resume light work on June 14, 1999.

By letter dated June 30, 1999, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional factual and medical information. Appellant was allotted 30 days to submit the requested evidence.

By letter dated July 9, 1999, the Office advised appellant that her claim was not payable at this time, as her claim has not been accepted as work related.

In a July 10, 1999 attending physician's report (Form CA-20), Dr. Chen indicated that appellant's period of total disability was from April 9 to June 13, 1999. He indicated that the period of partial disability commenced on June 14, 1999. The dates of treatment were March 30, April 10 and 24, 1999.

In a July 10, 1999 disability certificate, Dr. Chen indicated that dates of treatment were for May 11 and 25, and June 8, 1999. This slip was stamped but not signed by the physician.

On August 26, 1999 the Office accepted that appellant sustained a lumbar strain, thoracic strain and lumbar contusion.

By decision dated September 14, 1999, the Office rejected appellant's claim for compensation for continuation of pay and disability compensation on and after March 30, 1999 finding that there was no medical evidence supporting that appellant was totally disabled for work during this period.

By letter dated September 17, 1999, appellant requested a hearing.

The hearing was held on February 23, 2000.

In a report dated March 18, 2000, Dr. Chen reiterated the contents of his previously undated letter, which was received by the Office on or about August 21, 1999.

In a decision dated May 17, 2000 and finalized on May 22, 2000, the Office hearing representative affirmed the September 14, 1999 decision. The hearing representative found that appellant failed to provide medical evidence needed to support her claim for compensation for total disability from April 1 to June 13, 1999.

The Board finds that appellant has failed to establish that she was entitled to compensation for total disability during the period of April 1 to June 13, 1999 causally related to her March 29, 1999 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act has the burden of proof in establishing the essential elements of his or her claim, including the fact that the injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.¹

In the instant case, although appellant established that she sustained a lumbar strain, thoracic strain, and lumbar contusion, in the performance of duty on March 29, 1999, she did not establish that the injury resulted in total disability for employment during the period April 1 to June 13, 1999.

Dr. Rico found that appellant could resume light work with certain restrictions as early as March 29, 1999 and again indicated on April 1, 1999 that appellant could perform light duty. He never reported that appellant was totally disabled for employment.

Dr. Chen, appellant's treating physician, initially found that appellant was totally incapacitated from her regular duties on March 30 and 31, 1999 and released her to light duty as of April 1, 1999. He later indicated that appellant was totally incapacitated from April 9, 1999 to May 8, 1999. However, Dr. Chen did not explain how or why appellant was totally incapacitated when he initially stated she could perform light duty as of April 1, 1999. He further added in a May 11, 1999 disability certificate that appellant was totally incapacitated from the period of March 30, 1999 to an undetermined period of time. Dr. Chen did not explain how he could initially state that appellant was released to light duty as of April 1, 1999 and subsequently change his opinion that appellant was totally incapacitated. The Board has previously upheld the Office's denial of continuation of pay in a situation where a physician extends the period of disability without providing any supporting medical rationale.² Dr. Chen attempted to explain the reason for appellant's total disability in the undated report received by the Office on July 21, 1999, which was subsequently dated as March 18, 2000. He indicated that the reason for appellant's total disability was that she was not given the requisite physical therapy, which had been prescribed and because of an increase of work restriction. However, the record does not contain any evidence of an increased work restriction. This report was of limited probative value as it was based on an inaccurate factual background.³ Additionally, there is no explanation from the physician regarding how a lack of physical therapy could cause appellant to become totally disabled.

The Board has explained that those medical reports, which are most contemporaneous with the date of injury, are the most reliable indicators of the period of disability.⁴ In this case, Drs. Rico and Chen, initially found that appellant could return to light duty March 29 and April 1, 1999 respectively. These reports were the most contemporaneous with the date of the

¹ See *Robin L. Brainard*, 43 ECAB 329 (1991); *Dean E. Pierce*, 40 ECAB 1249 (1989); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

² See *Christine M. Yuknas*, 33 ECAB 424 (1982).

³ See *Daniel J. Overfield*, 42 ECAB 718 (1991) (medical opinions based upon an incomplete or inaccurate factual background are entitled to limited probative value).

⁴ See *Robin L. Brainard*, *supra* note 1; *Christine M. Yuknas*, *supra* note 2.

injury. The subsequent reports from Dr. Chen merely extended the period of disability without any supporting medical rationale or were based on inaccurate information and were of limited probative value. Appellant was advised that she needed to submit rationalized medical evidence based upon objective findings during a physical examination, identifying total disability for the period claimed; however, she failed to submit such rationalized medical evidence for the period April 1 to June 13, 1999. Accordingly, she has failed to meet her burden of proof to establish total disability for work during that period.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 17, 2000 and finalized on May 22, 2000 is hereby affirmed.

Dated, Washington, DC
August 15, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member